UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 10 | Number 4 Article 8

6-1-1932

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securities.[29] Such is reported to have been a consideration that was persuasive to the General Assembly of 1923 in giving full exemption to foreign stock.[30] In 1930 the Tax Commission advised that this complete exemption created an unfair relationship in taxing policy as between domestic and foreign corporations, and advised the special income tax as a fair policy.[31] Equable taxation and fiscal expediency were deemed to demand that this stock not be taxed at *ad valorem* rates. But the same is true regarding other forms of intangibles. The legal remedy lies in constitutional amendment which will permit comprehensive classification.

E. M. PERKINS.

Workmen's Compensation—Accident Arising Out of and In Course of Employment In North Carolina.*

Few sections of the North Carolina Workmen's Compensation Act[1] have called for such frequent application and construction as §2 (f),[2] which provides that compensable "injury" shall mean only "injury by acident arising out of and in the course of the employment . . ." With a few exceptions, the North Carolina cases have reflected a disposition toward a liberal construction of this section, but not toward the radically liberal attitude adopted by some jurisdictions. In the cases which have arisen under §2 (f), there are many in which the accident clearly either did or did not arise out of and in the course of the employment; these will be appended in footnotes at the appropriate places, and the body of the note will be devoted to a consideration of what are thought to be the more interesting and "border-line" cases.[3]

[29] Possibly only acute analysts of their investments consider the corporation's taxes in deciding where to invest their money. The investor might not look beyond the tax liability of the stock in his own hands.

[30] REPORT OF THE N. C. TAX COMMISSION (1930) p. 28.

[31] REPORT OF THE N. C. TAX COMMISSION (1930) pp. 28, 29; see REPORT OF THE N. C. TAX COMMISSION (1928) 321, at 356. "It is not the exemption of foreign stock *per se* that is objectionable, but the discrimination involved in exempting stock and taxing bonds and other intangibles."

* This note is an attempt to collate the North Carolina cases decided under §2 (f) of the North Carolina Workmen's Compensation Act since the writing of an article entitled *Nine Months of Workmen's Compensation in North Carolina*, by Mr. A. K. Smith, which appeared in 8 N. C. L. REV. 418 (1930).

[1] N. C. CODE ANN. (Michie, 1931) §8081 (h) *et seq.*

[2] N. C. CODE ANN. (Michie, 1931) §8081 (i) (f).

[3] The decisions of both the North Carolina Industrial Commission (either of a single Commissioner or the full Commission) and of the North Carolina Supreme Court are considered. All references to the "Supreme Court" are to the Supreme Court of North Carolina.

The cases are susceptible of division into several categories on the basis of their facts.

Going To and From Work.

The general rule is that an employee is not entitled to compensation for injuries received while going to or from work.[4] In one case, a National Guardsman[5] had been ordered to report to camp. While on the way to the camp in his own car he was fatally injured in a collision. He was entitled to be paid for his services from the time that he left home. The Supreme Court held that the accident did not arise out of and in the course of the decedent's employment.[6]

[4] Cody v. Graham County Board of Education, 1 N. C. I. C. 407 (1930) (teacher slipped on rock in going home from school); Milsaps v. Graham County Board of Education, 1 N. C. I. C. 408 (1930) (teacher injured while returning from home to school district in which he taught); Lyon v. Allen Milling Co., 1 N. C. I. C. 477 (1930) (salesman slipped while filling radiator preparatory to going to work); Beck v. Huntley-Stockton-Hill Co., 2 N. C. I. C. 53 (1930) (clerk injured on way home after doing extra work at store); Pressley v. Woody Brothers' Bakery, 2 N. C. I. C. 87 (1930) (employee injured while cranking truck preparatory to going to work); McCarter v. Osceola Mill, 2 N. C. I. C. 116 (1930) (employee slipped on icy path while on way to work); Moore v. Pine Hall Brick & Pipe Co., 2 N. C. I. C. 162 (1931) (employee injured while on way home after having truck repaired for employer); Osborne v. Rockingham School Board, 2 N. C. I. C. 298 (1931) (teacher fell down steps of teacherage while starting to school); Waters v. Ritter Lumber Co., 3 N. C. I. C. 13 (1931) (employee's feet froze as result of walk home after work through snow); Ellrod v. Southern Desk Co., 3 N. C. I. C. 65 (1931) (employee injured when he stepped from car in front of rooming house); Bray v. W. H. Weatherly & Co., 3 N. C. I. C. 75 (1931) (employee injured while on way to employer's home to get truck in morning).

Note (1917) 12 N. C. C. A. 368 (accidents while on way to or from place of employment); (1931) 8 N. Y. U. L. Q. Rev. 699.

With Waters v. Ritter Lumber Co., *supra, cf.* Brady v. Oregon Lumber Co., 117 Ore. 188, 243 Pac. 96 (1926), rehearing denied, 245 Pac. 732 (1926) (plaintiff, after having been paid off, left logging camp for town; his feet were frozen on the way; compensation denied).

In Thomas v. Carolina Theatre, 1 N. C. I. C. 381 (1930) plaintiff was assistant manager of defendant theatre. After closing the theatre at night, and while on his way home, some highwaymen accosted him and forced him, at the point of a gun, to return to the theatre and open a safe, which the men robbed. After taking the money, one of them hit plaintiff and injured him. *Held,* the injury was compensable.

In Ruffin v. Golden Belt Mfg. Co., 3 N. C. I. C. 17 (1931) decedent was accustomed to go to work about an hour earlier every morning in order to exercise the horses of the president of defendant company. The president, not the company, paid decedent for this. Decedent was killed while riding one of the horses after the time his duties were to begin for defendant company. *Held,* no recovery.

[5] That a National Guardsman is an employee of the state, see Baker v. State, 200 N. C. 232, 156 S. E. 917 (1931); commented on in (1931) 37 W. Va. L. Q. 452.

[6] Hunt v. State, Adjutant General's Department, 201 N. C. 707, 161 S. E. 203 (1931).

It seems arguable that the accident occurred in the course of employment, for the Guardsman was entitled to pay and was proceeding under the direction of his commanding officer at the time that the accident occurred. However, the definition of "course of employment" apparently applied by the court in this case would leave little room for such an argument.[7] Further, even had the court taken the view that the accident occurred in the course of employment, it is probable that the fact that the injury was sustained on the public highway where the decedent was exposed to no greater risk than other travelers,[8] would have a tendency so to weaken the causal connection between the employment and the accident as to result in the holding that the accident did not arise out of the employment.[9]

Special circumstances may take the case out of the general rule that injuries sustained in going to and from work are not compensable. For instance, where, by the contract of employment, plaintiff was to furnish a team and do certain hauling for the employer, an injury which plaintiff sustained from a shying horse while going to work in the morning was held to be compensable, for, as he furnished the team, his employment began when he left home with the team.[10]

But the performance, while on the way to work, of some slight duty incidental to the main employment will not constitute such a circumstance as to suspend the operation of the general rule. Thus, no compensation was allowed an oil truck driver whose duty it was to solicit orders and who was injured while on the way to the place

[7] The court quotes with approval an excerpt from Bohlen, *A Problem in the Drafting of the Workmen's Compensation Acts,* 25 HARV. L. REV. 401, 403, a part of which is as follows: ". . . The place at which the injury is sustained becomes the determining factor among those things which he [the employee] does solely because he is engaged in a particular employment; only those are regarded as in the course of the employment which are done within the master's premises or upon some means of conveyance to or from his place of work which is provided by the master for the sole use of his servants and which the servant is required or entitled to use by virtue of his contract of employment."

[8] And his work as a National Guardsman did not render him peculiarly exposed to dangers of the street or highway, as in the case of a delivery boy who is almost constantly on the street. As to the latter, see Note (1920) 8 A. L. R. 935; Note (1923) 23 A. L. R. 403.

[9] But that the more recent cases give less weight to this doctrine of peculiar exposure to street risks, see Note (1927) 51 A. L. R. 509, 514, 533.

[10] Crawford v. Long, Snider & Codgill, 1 N. C. I. C. 425 (1930). It is to be noticed that in this case the furnishing of the team was an incident of the employment. In the National Guardsman case, *supra* note 6, decedent did not furnish his own car as an incident of his contract of employment as a member of the National Guard.

of the employer carrying an order for gas;[11] nor to a school janitor who had been told by his employer, a few days before, to purchase window cleaning material and who was injured while crossing a street to get the material as he was on his way to work.[12]

Provision by the employer for transportation to or from work must be included in the contract of employment to bring the employee so transported within the protection of the Act; he can not recover for injury sustained during merely accommodatory transportation.[13]

Deviation.

In the following case the injury was by accident that occurred during a deviation, and the question was presented whether the deviation was so material as to preclude recovery. A salesman set out in his car to go to the store of a customer. He departed from the most direct route in order to stop at a drug store and procure tobacco. He testified that he would not have planned to get the tobacco if he had not been going to the customer's store. The total length of his deviation would have been 3500 feet.[14] He was injured while on the way to the drug store and after having deviated from the most direct route to the customer's store. The Supreme Court sustained the claim for compensation, although there was one dissenting opinion.[15]

Where the employee has deviated but has returned to the direct route and is pursuing it at the time of the accident, compensation will be awarded.[16] Plaintiff, a milk truck driver, worked for a dairy located just outside the city. It was his duty to return the truck to the employer's premises after each day's deliveries. One day, after

[11] Dudley v. The Texas Co., 2 N. C. I. C. 308 (1931).

[12] Massey v. Board of Education, 3 N. C. I. C. 26 (1931).

[13] Edwards v. T. A. Loving Co., 3 N. C. I. C. 30 (1931) (decedent was being transported by employer from one place of work to another when killed). See Fox v. Phoenix Mills, 2 N. C. I. C. 261, 263 (1931), reversing 2 N. C. I. C. 149 (1930). Note (1929) 62 A. L. R. 1438; (1931) 8 N. Y. U. L. Q. REV. 699.

[14] Plaintiff lived on the west side of Duke Street, and the customer's store was also located on the west side of Duke Street. But it does not appear how long the direct route would have been.

[15] Parrish v. Armour Co., 200 N. C. 654, 158 S. E. 188 (1931). Stacy, C. J., dissented.

As to injury to a local solicitor, collector, or outside salesman, see Note (1924) 29 A. L. R. 120; Note (1925) 36 A. L. R. 474.

Another deviation case: Jackson v. Western Union Telegraph Co., 2 N. C. I. C. 127 (1930), affirmed by full Commission, 2 N. C. I. C. 175 (1931) (motorcycle messenger boy stopped at motorcycle shop on way back from delivering message and was injured there).

[16] Brown v. Hildebrand, 2 N. C. I. C. 203 (1930); Rogers v. Imperial Life Insurance Co., 2 N. C. I. C. 335 (1931).

making deliveries, he parked the truck in the city for an hour or two while he engaged in personal business and amusement. While driving from the city to the employer's premises, he suffered injury. The Supreme Court allowed recovery.[17]

It is believed that these cases indicated a continuation of the moderately liberal attitude already adopted toward the problem of deviation. The facts of the cases are such that no ground is offered upon which to base an opinion that this attitude has been extended.[18]

Injury On Employer's Premises While Not About Regular Duties.

Where an employee steps aside from his regular duties but is still on the employer's premises when injured, the award of compensation seems contingent largely on the nature and extent of the departure. In one case, plaintiff was a mill worker. The department in which she worked closed at 11:00 o'clock, but all employees were forced to remain on the premises until 11:30 before leaving. During this half-hour period, plaintiff rode on an elevator to the first floor with a friend to see about getting the friend employment. In returning, plaintiff was seriously injured on the elevator. The Supreme Court held that she was entitled to compensation.[19] And where plaintiff "caught up" with his work and went into another department to notify the master mechanic that the plumbing in the house which had been rented to the plaintiff by the employer was defective, and was there injured by a lathe, it was held he could recover.[20] But where the employee, while still on the employer's premises, steps aside and

[17] Jackson v. Dairymen's Creamery, 2 N. C. I. C. 346 (1931), affirmed, 202 N. C. 196, 162 S. E. 359 (1932).

[18] See Smith, *op. cit. supra* prefatory note, at 420.

[19] Bellamy v. Great Falls Mfg. Co., 200 N. C. 676, 156 S. E. 246 (1931). On the authority of this case, compensation was allowed in Britton v. Spofford, 3 N. C. I. C. 103 (1931) (plaintiff employed in card room passed through picker room, stopped to talk a moment with another employee, was injured).

With Bellamy case, *supra, cf.* Taylor v. Hogan Milling Co., 129 Kan. 370, 282 Pac. 729 (1929), 66 A. L. R. 752 (1930) (employee injured while going on elevator from one floor to another, with permission of employer, to pay bill; compensation allowed).

In Johnson v. Provencal Turpentine Co., 125 So. 321 (La. 1929), recovery was denied an employee who was injured on the premises of his employer after the completion of his day's work and while he was performing a favor for the benefit of a third person.

As to injury to an employee engaged in work for the employer (not necessarily on the employer's premises) but outside the scope of his usual duty, see Note (1924) 20 A. L. R. 1335.

[20] Sisk v. Ora Mill Co., 1 N. C. I. C. 320 (1930).

exposes himself to a hazard not related to his sphere of duties, compensation is denied.[21]

Hazardous Employment.

If the nature of the employment is such that the employee is subjected to peculiar hazards, and he is injured by an accident which arises out of his exposure to these hazards, he is entitled to compensation.[22] Thus, where decedent was a night watchman and was attacked while punching the time clock by an unknown assailant, it was held by the Supreme Court that the accident arose out of and in the course of decedent's employment.[23] In another case, decedent was a boiler fireman who was required to be at the employer's planing mill at 5:30 each morning. Near the mill were a well traveled highway and a railroad; consequently, many tramps and "hitch-hikers" passed by. Decedent was murdered and robbed by an unknown party after he had gone to work. The Supreme Court sustained his claim.[24]

Injury From Practice Which Is Tolerated By Employer.

In some of the cases, where the employer knew of some incidental practice resorted to by the employees while about their work, and raised no objection to it, the employee injured while following this practice successfully asserted that the accident arose out of and in the course of the employment. For example, the employer knew of

[21] Piercy v. Henrietta Mills, 2 N. C. I. C. 28 (1930) (plaintiff left usual employment, went to rear of building, had lunch; on way back, while passing a bobbin cleaning machine, he let the lid down and was injured); McCarter v. Thomas Hosiery Mills, 2 N. C. I. C. 329 (1931) (during lunch hour plaintiff went to another part of the premises, not by the well lighted and customary way, but along a little used way, and claims he fell into oil pit and was injured; compensation was denied, but conceivably, might have been awarded if there had been sufficient evidence of acquiescence on the part of the employer in the use of the hazardous way: see *infra* notes 25 and 26); Query v. Glasgow-Allison Co., 3 N. C. I. C. 63 (1931) (plaintiff parked his private car in alley in such a way that it interfered with passage of truck; went to move it, was injured).

In Burris v. Southern Mfg. Co., 1 N. C. I. C. 423 (1930), plaintiff left premises, walked across railroad tracks without employer's knowledge or consent, and in absence of emergency. On way back, she claims she slipped on the railroad tracks. *Held,* the injury was not compensable.

[22] Copper v. Rowan Cotton Mills Co., 2 N. C. I. C. 133 (1930) (plaintiff was master mechanic subject to call at all times for purpose of keeping plant operating efficiently, and had to cross congested highway frequently); Stanland v. Wilmington Terminal Warehouse Co., 2 N. C. I. C. 331 (1931) (decedent, night watchman, attacked while guarding employer's warehouse).

[23] West v. East Coast Fertilizer Co., 2 N. C. I. C. 209 (1931), affirmed, 201 N. C. 556, 160 S. E. 765 (1931). As to injuries to watchman generally, see Note (1920) 6 A. L. R. 578; Note (1921) 13 A. L. R. 512.

[24] Goodwin v. Bright, 3 N. C. I. C. 9 (1931), affirmed, 202 N. C. 481 (1932).

the custom of the employees to go to the "hot water hole," where steam was condensed into water, to get water for their own automobiles. Plaintiff was a fireman whose duty required that he go to the hole twice each night to let water in the boiler. He fell into the water and was burned, however, while attempting to get water for his car. Compensation was given.[25] And where the employer knew of and tolerated horse-play among the employees, an injury received by plaintiff as a result of another employee stepping on his foot and pushing him while they were standing in line preparatory to checking out, was held compensable.[26]

Other Cases.

A newspaper employee was injured while playing on a baseball team composed only of employees of the paper, in a game against a team purporting to represent another newspaper in the same city.[27] Plaintiff recovered. But in a later case, an injury received by a mill employee while playing on a baseball team composed of employees of the mill, was held not to be compensable.[28] In both cases, participation by employees seems to have been voluntary; equipment was furnished by the respective employers; conceivably both employers received an indirect benefit from the recreational effect upon the morale of the employees. In the latter case, on the day of the game, all the employees were released about 4:00 P.M., and were made a gift of their wages for the remainder of the working day; whether this was so in the former case does not appear. In the former case the employer might have anticipated some benefit from the successful competition of the team with that of the other newspaper; no such element appears in the latter case. However, it is believed that any distinction between the cases is tenuous, and that the latter case, in denying compensation, reaches the more logical result.[29] But par-

[25] Tucker v. Paola Cotton Mills, 1 N. C. I. C. 395 (1930).

[26] Wilkie v. American Enka Corp., 3 N. C. I. C. 44 (1931). See Chambers v. Union Oil Co., 1 N. C. I. C. 221, 224, affirmed, 199 N. C. 28, 31, 153 S. E. 594, 596 (1930) (plaintiff, while filling an oil truck driven by him, was injured by the accidental discharge of a pistol carried by a fellow truck driver; there was some evidence of acquiescence by the employer in the habit of employees in carrying weapons); Christopher v. Shuford Mill Co., 1 N. C. I. C. 420 (1930), affirmed by full Commission in 1 N. C. I. C. 483 (1930) (evidence of acquiescence in plaintiff's operation of the machine at which he was injured).

[27] Bates v. Raleigh *Times*, 1 N. C. I. C. 433 (1930).

[28] Benson v. Nebel Knitting Mills, 3 N. C. I. C. 105 (1931).

[29] With these two cases, *cf.* Ryan v. State Industrial Commission, 128 Okla. 25, 261 Pac. 181 (1927): plaintiff was employed by public utilities company as meter reader, but evidence tended to show that he was hired primarily because

ticipation in play may be so closely related to the employment as clearly to become a part of it. For example, where plaintiff worked for the proprietor of a bowling alley, and it was plaintiff's duty to bowl with customers of the alley in order to stimulate business, an injury received while bowling was held compensable.[30]

In another case, plaintiff was a hotel clerk. While about his duties, he witnessed a woman register at the hotel with a man not her husband. The husband subsequently brought an action for divorce, and his attorney informed plaintiff's employer that he had a subpoena for plaintiff, who was wanted as witness, but that if the employer saw that plaintiff was present at the trial, he would not have the subpoena served. Plaintiff went to the place of trial with his employer in the latter's car. On their way back, he was injured when the car was wrecked.[31] Plaintiff's claim was sustained. Such a result could be reached only by a very liberal construction of §2 (f).[32]

he was a good ball player, and the company indirectly maintained a team to compete with those of other companies. Plaintiff sustained an injury while practicing with the team near the place of employment during the lunch hour. *Held,* if the injury occurred in the course of the employment, it did not arise out of it; compensation denied.

[30] Dixon v. Parrish, 2 N. C. I. C. 375 (1931).

[31] Beal v. Cobb-Latta Hotel Co., 2 N. C. I. C. 100 (1930).

[32] The employer was not a party to the suit. If he had been, the case would, of course, have been a much stronger one for allowing compensation.

Additional cases:

In the following cases, the accident was held to have arisen out of and in the course of the employment: Wheeler v. City Ice & Fuel Co., 1 N. C. I. C. 363 (1930) (plaintiff injured while on trip for employer); Peoples v. Warrenton Box & Lumber Co., 1 N. C. I. C. 507 (1930) (plaintiff had been indulging in horse-play but had abandoned it when injured); Wineberry v. Farley Stores, Inc., 2 N. C. I. C. 64 (1930) (decedent met accident while attempting to make collections for employer); Buchanan v. Parker-Graham-Sexton, Inc., 202 N. C. 176, 162 S. E. 223 (1931) (employee killed by gas poisoning; as to injury from fumes as accident or occupational disease, see Note (1920) 6 A. L. R. 1466; Note (1923) 23 A. L. R. 335).

Accident not arising out of and in the course of the employment: Stewart v. Curtis-Wright Flying Service, 2 N. C. I. C. 13 (1930) (airplane pilot injured while "hopping" passenger for own profit); Whitley v. North Carolina Highway Commission, 1 N. C. I. C. 393 (1930), affirmed, 201 N. C. 539, 160 S. E. 827 (1931) (plaintiff injured by shot from hunter while repairing highway truck; *cf.* Boris Const. Co. v. Haywood, 214 Ala. 162, 106 So. 799 (1925), rehearing denied (1926): decedent accidentally shot by small boy shooting at sparrows while decedent was in course of employment; compensation awarded); Booth v. Scott Coal Co., 2 N. C. I. C. 323 (1931) (coal truck driver injured while apparently using truck after working hours for personal motives); Sealey v. American Enka Corp., 2 N. C. I. C. 328 (1931) (plaintiff injured after he had seized fellow employee and threatened him with knife); Davis v. North State Veneer Corp., 200 N. C. 263, 156 S. E. 859 (1931) (plaintiff injured while performing voluntary errand for employer); Boyette v. Thompson-Wooten Oil Co., 2 N. C. I. C. 378 (1931) (evidence that plaintiff was injured by con-

Although the case goes far in allowing compensation, it may perhaps be justified on the ground that the employer apparently undertook to see that plaintiff was present at the trial.

W. J. ADAMS, JR.

Banks and Banking—Deposit for Specific Purpose as Preferred Claim.

A bank received a deposit under an escrow agreement to be paid to a third party subject to an arbitration. The bank having failed pending the arbitration proceeding, it was held that the sum was a deposit for a specific purpose, creating a trust relationship, and the beneficiaries were entitled to a preferred claim to the funds in the hands of the receiver.[1]

Bank deposits may be classified as either general, special, or deposits for a specific purpose.[2] The ordinary deposit is general, creating a debtor-creditor relationship between the depositor and the bank.[3] Upon failure of a bank containing such deposits, the general depositor is not entitled to any preference over the creditors of the bank, but shares *pro rata* with them.[4] A special or segregated deposit arises where it is agreed that the thing deposited shall be safely kept,

vulsion); Hemmingway v. Atlas Plywood Corp., 2 N. C. I. C. 269 (1931) (plaintiff caught pneumonia while working in hole).

Where the cause of accident was entirely unrelated to the employment: Honeycutt v. Vann Motor Co., 1 N. C. I. C. 510 (1930) (plaintiff injured while trying to skate); Canter v. Surry County Board of Education, 1 N. C. I. C. 414 (1930) (school janitor injured on premises by shotgun he was carrying for purpose of killing squirrel); Plyler v. Indian Trail School, 2 N. C. I. C. 343 (1931) (teacher made sick by food furnished at teacherage where she boarded); Vann v. Goldston School Board of Education, 2 N. C. I. C. 361 (1931) (decedent was school teacher; became sick at school and sent to principal for aromatic spirits of ammonia; was sent poison ammonia, which she drank); Bodenheimer v. Ragan Knitting Co., 3 N. C. I. C. 95 (1931) (plaintiff bitten while at work by mad dog, owner unknown).

[1] Parker v. Central Bank and Trust Co. of Asheville, 202 N. C. 230, 162 S. E. 564 (1932).

[2] Corporation Commission of N. C. v. Merchants' Bank & Trust Co., 193 N. C. 696, 138 S. E. 24 (1927); 1 BOLLES, MODERN LAW OF BANKING (1907) 432.

[3] Corporation Commission of N. C. v. Merchants' Bank & Trust Co., 194 N. C. 125, 138 S. E. 530, 57 A. L. R. 382 (1927); Northwest Lumber Co. v. Scandinavian-American Bank, 130 Wash. 38, 225 Pac. 825 (1924); 1 BOLLES, *op. cit. supra* note 2. In the absence of an agreement to the contrary, a deposit is presumed to be general. Washington Shoe Mfg. Co. v. Duke, 126 Wash. 510, 218 Pac. 232, 37 A. L. R. 611 (1923); Lawrence v. Lincoln County Trust Co., 125 Me. 150, 131 Atl. 863 (1926).

[4] McClain v. Wallace, 103 Ind. 562, 5 N. E. 911 (1885); Schmelling v. State, 57 Neb. 562, 78 N. W. 279 (1899); Bank of Blackwell v. Dean, 9 Okla. 626, 60 Pac. 226 (1900).